IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.4865 OF 2004
IN
CRIMINAL APPEAL NO.1322 OF 2004

Shri Nileshkumar M. Patel
and Ors. ...Applicants.

V/s

State of Maharashtra ...Respondent

Shri B.D. Joshi, Advocate for the applicants.

Mr. R.M. Agarwal, Advocate for the respondent No.1.

Mr. R.Y. Mirza, APP for the respondent No.2 State.

CORAM: V.M. KANADE, J.
DATE : 5TH NOVEMBER, 2004.

P.C.:

1. Heard the learned Counsel appearing on behalf of the applicants and the learned Counsel appearing on behalf of respondent No.1 and the learned APP for the respondent No.2 - State.

2. Applicants are convicted under section 307 read with section 149 of the IPC and sentenced to undergo R.I. for seven years. It is submitted that the applicants were minors on the date of the incident. The learned Counsel appearing on behalf of the applicants has produced School Leaving Certificates which show that the date of birth of Nileshkumar Patel

is 1/1/1975, the date of birth of Nitin Patel is 6/4/1976 and the date of birth of Vinod Patel is 20/4/1975. The incident in question occurred on 29/4/1992. Under section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 a juvenile cannot be tried by the regular court and if a plea is raised even for the first time in the High Court or the Apex Court, such a plea has to be entertained and considered. This Court in the case of **State of Maharashtra Vs. Jagdish @ Sagar Chaudhari & Ors** reported in **2004(2) ALL MR 28** has held that the date of commission of the offence is the relevant date for the purpose of applicability of the provisions of the Act. The death penalty which was imposed on the accused was quashed and set aside. The Division Bench of this Court while passing the said order took into consideration judgment of the Apex Court in the case of **Umesh Chandra Vs. State of Rajasthan**, reported in **1982 SCC (Cri) 396** and other subsequent judgments.

3. Apart from that, the applicants were on bail during trial. Applicants be released on bail on same terms and conditions as imposed by the Trial Court. They shall, however, report to Silvasa Police Station once in a month.

4. Leave to amend is granted to annex the School Leaving Certificates and the other documents, if any.

5. Application is accordingly disposed of.

V.M. KANADE, J.